

**STATE PARKS PUBLIC ACCESS EASEMENT
PUBLIC REVIEW DRAFT (7/12/04)**

Recording requested by
and when recorded mail to:

(Space above line for Recorder's use only.)

**DEED OF PUBLIC ACCESS CONSERVATION EASEMENT
AND AGREEMENT CONCERNING PUBLIC ACCESS EASEMENT RIGHTS**

This Deed of Public Access Conservation Easement and Agreement Concerning Access Rights (the "Public Access Easement") is granted on this _____ day of _____, 2004, by HEARST HOLDINGS, INC., a Delaware corporation ("Grantor"), to the DEPARTMENT OF PARKS AND RECREATION, STATE OF CALIFORNIA ("Grantee"), hereinafter collectively referred to as the "Parties."

RECITALS

A. Grantor is the sole owner in fee simple of certain real property consisting of approximately Eighty-One Thousand Seven Hundred Seventy-Seven (81,777) acres, located in San Luis Obispo County, California, described in "Exhibit A" attached hereto and incorporated herein by this reference (the "Ranch").

B. Grantor desires to grant to Grantee this Public Access Easement over the area described in "Exhibit B" attached hereto and incorporated herein by this reference (the "Public Access Easement Area") and depicted on "Exhibit C" attached hereto and incorporated herein by this reference (the "Public Access Easement Area Map"), to allow the development and management of a continuous segment of the California Coastal Trail along the coast of the Ranch (the "Trail" or "California Coastal Trail"), and for public access over the Trail and certain other trails connected thereto. Grantee desires to accept the Public Access Easement from Grantor and to develop the Trail and manage public uses thereof in accordance with the terms and provisions of this Public Access Easement. The Public Access Easement Area consists of three distinct areas: Pico Cove Conservation Area, San Simeon Point Conservation Area and Ragged Point Conservation Area, each of which is more particularly described in Exhibit "B" and depicted on Exhibit "C".

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C. Grantee is a “qualified organization” as defined by Section 170(h)(3) of the Internal Revenue Code and is eligible to hold this Public Access Easement. By ***[identify DPR resolution]***, Grantee is authorized to acquire this Public Access Easement and accept the responsibility of monitoring and enforcing the terms of this Public Access Easement.

D. Affording public access to the Public Access Easement Area is of great importance to the Grantee, the people of the County of San Luis Obispo and the State of California, and visitors from across the United States of America. The public access values include the following: ***[Review Note: The Parties are preparing a detailed statement of the values.]*** (“Conservation Values”).

E. This Public Access Easement is being granted in connection with other conservation transactions collectively affecting the entirety of the Ranch, including: 1) the concurrent conveyance to Grantee of fee title to another portion of the Ranch (“Public Ownership Conservation Area”) on the west side of Highway 1 and 2) grant of a conservation easement to the California Department of Transportation (“Caltrans Scenic Protection Easement”) which encumbers both the Public Ownership Conservation Area and the Public Access Easement Area.

PUBLIC ACCESS CONSERVATION EASEMENT

In consideration of the recitals set forth above, which are incorporated herein by reference, and of their mutual promises and covenants, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby grants and conveys to Grantee, its permitted successors and assigns, and Grantee hereby accepts, pursuant to its authority under Public Resources Code Section 5005, a perpetual “conservation easement” as defined by Section 815.1 of the Conservation Easement Act of 1979 (California Civil Code 815 *et seq.*) to allow public access for non commercial passive recreational purposes over the Public Access Easement Area more particularly described in Exhibit “B” of the nature and character described in this Public Access Easement (“Public Access”).

1. **Purpose.** The primary purpose of this Public Access Easement is to permit, in accordance with the terms and conditions of this Public Access Easement, permanent and perpetual Public Access within the Public Access Easement Area. The secondary purposes are to preserve the scenic beauty and natural qualities of the Public Access Easement Area while accommodating Public Access, to limit erosion caused by public use of the Public Access Easement Area, and to protect and maintain any private or public investment made in obtaining this Public Access Easement. In addition, the Public Access Easement Area is conserved by concurrent grants of property interests listed in Recital E, above.

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2. Access Parameters and Plan Requirement. Grantee shall manage and control Public Access in accordance with the "Access Parameters" attached hereto as "Exhibit D" and incorporated herein by this reference. Prior to Grantee allowing Public Access or installing any Public Access improvements over or on any part of the Public Access Easement Area, Grantee shall have completed a Public Access plan consistent with the Access Parameters, following its normal public review processes for the development of such plan (the "Public Access Plan"). The Public Access Plan shall be subject to Grantor's approval based upon a determination that the Public Access Plan is consistent with the Access Parameters. The Public Access Plan, in the discretion of Grantee, may be completed and implemented in two phases. If phased, the first phase will be for the California Coastal Trail within the Public Access Easement Area and the second phase for the balance of Public Access authorized by this Public Access Easement. Prior to completion and implementation of the Public Access Plan, or a phase thereof, access to the Public Access Easement Area shall be at the sole discretion of Grantor pursuant to revocable permission under Civil Code Section 813. ***[Review Note: Access Parameters to include further restrictions on Public Access facilities.]***

3. Rights Retained by Grantor. Except as expressly restricted by the terms and conditions of this Public Access Easement, Grantor retains all ownership rights in the Public Access Easement Area and retains the right to perform any act not prohibited or limited by this Public Access Easement. Grantor's retained rights include, but are not limited to: (a) the right to sell, encumber, or otherwise transfer the Public Access Easement Area or portions thereof, to anyone Grantor chooses, subject to Grantee's rights under this Public Access Easement; (b) the right to defend against actions of eminent domain; (c) the right to dedicate additional public access rights over the Public Access Easement Area; *provided*, that (i) such additional rights shall not conflict with any of Grantee's rights under this Public Access Easement; (ii) Grantee shall be notified in writing at least ninety (90) days in advance of any proposed new dedication of public access rights over any portion of the Public Access Easement Area, which notice shall include the proposed terms and conditions of the dedication; and (iii) no new public access rights shall result in Grantee's having to bear any additional obligation or cost under this Public Access Easement.

4. Prohibition of Mining. Exploration for, or the removal or extraction of any mineral or non-mineral substance by any surface or subsurface mining or extraction method conducted within the Public Access Easement Area is prohibited.

5. Responsibilities of Grantor and Grantee Not Affected. Other than as specified herein, this Public Access Easement is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any existing obligation of the Grantor as owner of the Public Access Easement Area. Among other things, this shall apply to:

(a) Taxes. Grantor shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Public Access Easement Area by competent authority; *provided*, Grantee shall pay

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before delinquency any tax or assessment on the Public Access Easement or improvements by Grantee authorized by this Public Access Easement.

(b) Upkeep and Maintenance. Grantee shall maintain and repair the Public Access trails and Public Access facilities authorized in the Public Access Plan. Upon request from Grantor, Grantee shall repair any damage to, and keep free of litter, the Public Access Easement Area, resulting from Public Access on the Public Access Easement Area. The Public Access Plan will include a maintenance and security component. Except as otherwise provided in this Public Access Easement, Grantee shall have no obligation for the upkeep or maintenance of the Public Access Easement Area unless Grantor and Grantee mutually agree on cooperative programs and cost sharing for specific projects.

(c) Liability and Indemnification. Grantee shall hold harmless, indemnify, and defend Grantor and its officers, directors, employees, contractors, legal representatives, agents, heirs, personal representatives, successors and assigns, and each of them (collectively "Grantor Indemnified Parties") from and against all claims arising from or in any way connected with any injury to or the death of any person, or physical damages to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Public Access Easement Area in connection with the exercise of the rights of Public Access granted by this Public Access Easement, except to the extent caused by the gross negligence or willful misconduct of any of the Grantor Indemnified Parties.

(d) Insurance. Grantee shall maintain a comprehensive general liability policy insuring against bodily injury and property damage on the Public Access Easement Area in the amount of not less than five (5) million dollars (\$5,000,000), which amount shall be adjusted every five (5) years to reflect the percentage increase during the past five (5) years in the CPI; *provided*, Grantee may self insure to the extent reasonably approved by Grantor. The original Grantee (Department of Parks and Recreation, State of California) is pre-approved by Grantor as self insured. The "CPI" means the United States Department of Labor's Bureau of Labor Statistics = San Francisco-Oakland-San Jose Area Consumer Price Index for all Urban Consumers (CPI-U, all items) (1982-84=100), or the successor of such index. Grantor shall be named an additional insured on the policy. The liability insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to Grantor. Grantee waives all rights of subrogation against Grantor and its agents, representatives, officers, directors and employees for recovery of damages to the extent these damages are covered by insurance maintained pursuant to this Public Access Easement. Grantee shall furnish Grantor with certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. Such certificates shall provide for thirty (30) days written notice to Grantor prior to the cancellation or material change of any insurance referred to herein. Any failure of Grantor to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Grantor to identify a deficiency from evidence that is provided shall not be construed as a waiver of

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Grantee's obligation to maintain such insurance. The foregoing insurance requirements do not replace, waive, alter or limit the hold harmless or indemnification provisions of this Public Access Easement.

6. Forbearance No Waiver. Forbearance by the Grantee or Grantor to exercise its respective rights under this Public Access Easement shall not be construed to be a waiver by the Grantee or Grantor of such term or of any subsequent breach of the same or any other term of this Public Access Easement. No delay or omission in the exercise of any right or remedy by Grantor or Grantee shall impair such right or remedy or be construed as a waiver.

7. Grantee Transfer of Public Access Easement.

(a) Grantee may assign its interest, rights and obligations under this Conservation Easement only to an entity that is: (1) qualified to hold a conservation easement under Section 815.3 of the California Civil Code; (2) a "qualified organization" as defined in Section 170(h)(3) of the U.S. Internal Revenue Code, 26 U.S.C. 170(h)(3); and (3) willing and financially able to assume all of the responsibilities imposed on Grantee under this Public Access Easement. In the event that Grantee decides to assign its interest, rights and obligations under this Public Access Easement, it shall first offer such assignment to American Land Conservancy, a California non-profit public benefit corporation ("ALC"); *provided*, that, at the time of such offer, ALC meets each of the foregoing three qualification criteria. In the event that ALC is either not qualified or not willing to take assignment of Grantee's interest under the Public Access Easement, then Grantor shall have one hundred eighty (180) days following Grantee's notice to Grantor of such events within which to designate an assignee that meets each of the foregoing three qualification criteria. If Grantor is unable or chooses not to designate an assignee within such period, Grantee may proceed to assign all, but not less than all, of its interest, rights and obligations under this Conservation Easement to any entity that meets all of the foregoing designation criteria. Notwithstanding anything in this Subsection 17(a) to the contrary, this Public Access Easement shall not be transferred by Grantee to any governmental entity or public agency without the consent of the Grantor, which consent shall be in Grantor's sole discretion.

(b) If Grantee ever ceases to exist or no longer qualifies to hold this Conservation Easement under Section 170(h) of the U.S. Internal Revenue Code, or applicable state law, Grantor shall petition a court of competent jurisdiction to transfer this Public Access Easement to an organization that meets each of the three qualification criteria specified in Subsection 7(a). The Parties intend that, in the selection of a transferee entity, preference be given to a qualified private non-profit organization of Grantor's choosing with the requisite experience in preserving and protecting the Conservation Values.

8. Grantor Transfer of the Public Access Easement Area. Any time Grantor transfers any ownership interest in the Public Access Easement Area, or any

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portion thereof, or any interest in any portion thereof, Grantor shall notify Grantee in writing prior to the transfer, and the deed of conveyance or other transfer instrument shall expressly refer to this Public Access Easement. Grantor's failure to notify Grantee or include the required reference to this Public Access Easement in the deed or other transfer instrument shall not affect the continuing validity and enforceability of this Public Access Easement.

9. Amendment of Public Access Easement. This Public Access Easement may be amended only with the written consent of Grantee and Grantor. Any amendment shall refer to this Public Access Easement and shall be recorded in the official records of San Luis Obispo County, California.

10. Grantor's Title Warranty. Grantor represents and warrants that Grantor has good fee simple title to the Public Access Easement Area, free from any and all liens or encumbrances except those liens and encumbrances shown in the preliminary title report provided to Grantee or otherwise disclosed to Grantee prior to recordation of this Public Access Easement. This Public Access Easement is subject to the Caltrans Scenic Protection Easement.

11. Environmental Provisions.

(a) **Environmental Liabilities and Indemnification.** Grantee and Grantee's successors in interest shall indemnify, protect and defend, and hold harmless the Grantor Indemnified Parties from and against any claims (including, without limitation, third party claims for personal injury or death, damage to property, or diminution in the value of property), actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities (including sums paid in settlements of claims), remedial action, compliance requirements, enforcement and clean-up actions of any kind, interest or losses, attorneys' fees (including any fees and expenses incurred in enforcing this indemnity), consultant fees, and expert fees that arise directly or indirectly from or in connection with any Hazardous Substance, as defined below, released or deposited as a result of action by the Grantee, its officers, directors, members, employees, contractors, legal representatives, agents, successors and assigns, and each of them, or resulting from Public Access, on or about the Public Access Easement Area. Grantor reserves the right (but not the obligation) to retain counsel of Grantor's choice, to supplement the defense required to be provided by Grantee pursuant to this Subsection. The indemnity obligations of any successor in interest of Grantee pursuant to this Subsection 11 (a) shall be limited to the portion of the Public Access Easement Area to which the successor takes title. Notwithstanding any statutory limitation otherwise applicable, the indemnity obligations of Grantee to the Grantor Indemnified Parties pursuant to this Subsection 11(a) shall continue after transfer to a successor in interest unless a written request for consent to assignment of such indemnity obligations to a successor in interest is approved by Grantee. In considering any such request, Grantee may take into account the financial capabilities of the successor in interest, without regard to any third party financial assurances. Grantee's consent to such assignment may be denied only if there is a commercially reasonable basis for such denial.

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(b) Definitions.

(1) The term "Environmental Law" shall include, but shall not be limited to, each statute named or referred to below, and all rules and regulations there under, and any other local, state and/or federal laws, ordinances, rules, regulations, orders and decrees, whether currently in existence or hereafter enacted, or common law, which govern (i) the existence, cleanup and/or remedy of contamination or pollution on property; (ii) the protection of the environment from soil, air or water contamination or pollution, or from spilled, deposited or otherwise emplaced contamination or pollution; (iii) the emission or discharge of Hazardous Substances into the environment; (iv) the control of Hazardous Substances; or (v) the use, generation, transport, treatment, removal or recovery of Hazardous Substances.

(2) The term "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any Hazardous Substance into the environment (including, without limitation, the continuing migration of Hazardous Substances into, onto or through the soil, surface water, or groundwater, and the abandonment or discarding of barrels, containers, and other receptacles containing any Hazardous Substance), whether or not caused by, contributed to, permitted by, acquiesced to or known to Grantor.

(3) The term "Hazardous Substance" shall mean (a) any oil, flammable substance, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which (i) pose a hazard to the Public Access Easement Area or to persons on or about the Public Access Easement Area or (ii) cause the Public Access Easement Area to be in violation of any Environmental Law; (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls, and radon gas; (c) any chemical, material or substance defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," "toxic substances," or words of similar import under any applicable local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto, including CERCLA, 42 USC section 9601, et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 USC section 6901, et seq.; the Hazardous Materials Transportation Act, 49 USC section 1801, et seq.; the Federal Water Pollution Control Act, 33 USC section 1251, et seq.; the California Hazardous Waste Control Law ("HWCL"), Cal. Health & Safety section 25100, et seq., Hazardous Substance Account Act ("HSAA"), Cal. Health & Safety Code section 25300, et seq., the Porter-Cologne Water Quality Control Act (the "Porter-Cologne Act"), Cal. Water Code section 13000, et seq., the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); Title 22 of the California Code of Regulations, Division 4, Chapter 30; (d) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety of the occupants of the Public Access Easement Area or the owners and/or occupants of property adjacent to or surrounding the Public Access

Easement Area, or any other person coming upon the Public Access Easement Area or adjacent property; and (e) any other chemical, materials or substance which may or could pose a hazard to the environment.

13. Captions. The captions in this Public Access Easement have been inserted solely for convenience of reference and are not a part of this Public Access Easement and shall have no effect upon construction or interpretation.

15. Notices. Any notice, demand, request, consent, approval or communication that either Party desires or is required to give to the other shall be in writing and either served personally or sent by United States certified mail, return receipt requested, addressed as follows or such other address as either Party from time to time shall designate by written notice to the other.

With a copy to: Hearst Holdings, Inc.
 Attention: General Counsel
 959 8th Avenue
 New York, NY 10019

To GRANTEE: DEPARTMENT OF PARKS AND RECREATION,
STATE OF CALIFORNIA
Attention:

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16. Condemnation. If all or any part of the Public Access Easement Area is taken by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, so as to terminate this Public Access Easement in whole or in part, Grantor and Grantee shall act jointly to recover the full value of their respective interests in the Public Access Easement Area so taken or purchased, and all direct or incidental damages resulting therefrom. If only a portion of this Public Access Easement Area is subject to such exercise of eminent domain, the Public Access Easement shall remain in effect as to all other portions of the Public Access Easement Area.

17. Extinguishment. If circumstances arise in the future that render the purpose of this Public Access Easement impossible to accomplish, this Public Access Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the compensation to which Grantee shall be entitled from any sale, exchange, or involuntary conversion of all or any portion of the Public Access Easement Area subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by applicable Federal or California law at the time, in accordance with Section 18, Valuation. Grantee shall use any proceeds received under the circumstances described in this paragraph in a manner consistent with the Primary Purpose of this Public Access Easement.

18. Valuation. This Public Access Easement constitutes a real property interest immediately vested in Grantee. For the purpose of Section 17, Extinguishment, the Parties stipulate that this Public Access Easement has a fair market value determined by multiplying (a) the fair market value of the Public Access Easement Area unencumbered by the Public Access Easement (minus any increase in value attributable to improvements made after the date of this Public Access Easement) by (b) the ratio of the value of the Public Access Easement to the value of the Public Access Easement Area, unencumbered by the Public Access Easement, as of the Effective Date. The values as of the Effective Date shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this Public Access Easement pursuant to Section 170(h) of the Internal Revenue Code of 1954, as amended. For the purposes of this paragraph, the ratio of the value of the Public Access Easement to the value of the Public Access Easement Area unencumbered by the Public Access Easement shall remain constant.

19. Entire Public Access Easement. This instrument sets forth the entire Public Access Easement of the Parties with respect to the Public Access Easement and supersedes all prior discussions, negotiations or understandings relating to the Public Access Easement, all of which are herein merged.

20. Counterparts. The Parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both Parties; each counterpart shall be deemed an original instrument as against any Party who has signed it.

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21. Attorneys' Fees. Should proceedings be brought to enforce or interpret any of the terms of this instrument, the prevailing Party in any such proceedings shall be entitled to recover from the non-prevailing Party its costs, including reasonable attorneys' and experts' fees.

22. Permission. Whenever permission, consent or approval ("permission") is required pursuant to this Public Access Easement, such permission shall be obtained in advance and in writing signed by the Party from whom permission is to be obtained. Whether permission should be granted or denied shall be determined based upon the purposes of this Public Access Easement, and shall not be unreasonably withheld, unless consent or permission is specified in this Public Access Easement as being within the sole discretion of a Party.

23. Exhibits. The exhibits attached hereto are incorporated herein by this reference:

Exhibit A:	Ranch Legal Description
Exhibit B:	Legal Description of Public Access Easement Area
Exhibit C:	Public Access Easement Area Map
Exhibit D:	Access Parameters
Exhibit D-1	Coastal Trail Corridors
Exhibit D-1-A	Coastal Trail Aerial Map Set – Pico Cove Conservation Area
Exhibit D-1-B	Coastal Trail Aerial Map Set – San Simeon Point Conservation Area
Exhibit D-1-C	Coastal Trail Aerial Map Set – Ragged Point Conservation Area
Exhibit D-2	San Simeon Point Recommended Public Access Plan
Exhibit D-3	Ragged Point/Pico Cove Recommended Public Access Plan

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24. Effective Date. This Public Access Easement is effective as of the date of recordation in the Official Records of the County of San Luis Obispo.

IN WITNESS WHEREOF, the parties hereto have executed this Public Access Easement as set forth below.

GRANTOR:

HEARST HOLDINGS, INC., a
Delaware corporation

Dated: _____

By: _____

Stephen T. Hearst,
Vice President and General
Manager
San Simeon Ranch Division

GRANTEE:

DEPARTMENT OF PARKS AND
RECREATION, STATE OF CALIFORNIA

Dated: _____

By: _____
Name: _____

Its: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____ before me, _____, a Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature (SEAL)

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____ before me, _____, a
Notary Public, personally appeared _____, personally
known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (SEAL)